

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

UNITED STATES DISTRICT COURT

for the

____western____ District of ____new York____

) Case No.

22 CV 234-V

) Jury Trial: ' Yes(X)

' No

(to be
filled in by the
Clerk's Office)

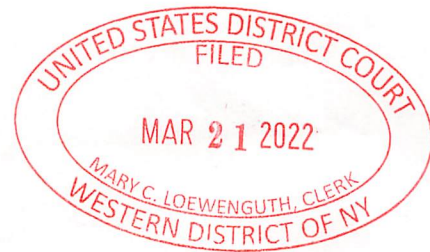
Plaintiff(s)

Christian Cunningham , Z.E m. 005

-v-

Defendant(s)

Kathleen w gariano, Judy Johnson



COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Christian Cunningham
Address 824 24th st Niagara falls NY

Name Z.E
Niagara falls New York 14301

Address: 1427 fort Ave

County Niagara
Telephone Number 716-526-5221
E-Mail Address vdimtl247@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Kathleen w gariano
Job or Title Niagara county family court judge
Address 775 3rd Street Niagara falls New York 14301

County Niagara
Telephone Number 716-371-4050
E-Mail Address *(if known)*

☐ Individual capacity ☐ Official capacity

Defendant No. 2

Name Judy Johnson
Job or Title *Niagara county family Court Magistrate judge*
Address 775 3rd Street Niagara falls New York

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County Niagara

Telephone Number 716-371-4050

E-Mail Address (if known)

(X) Individual capacity (X) Official capacity

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II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

’ Federal officials (a *Bivens* claim)

’ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1. *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000) At 2943 (familial privacy interests protected against undue state interference); *Roberts*, 468 U.S. at 617-18 (“choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State”); *Arnold*, 880 F.2d at 312 (right protected against “unjustified interference” from the government). (If the action of the court or governmental actor constitutes an unreasonable intrusion into the associational right it is not allowed and will not be constitutionally tolerated.)

2. *Santosky v. Kramer*, 455 U.S. at 749, 753-54, the Court expressly held that the interest of a parent, who has temporarily lost custody of his child, in avoiding elimination of his “rights ever to visit, communicate with, or regain custody of the child” is important enough to entitle him to the procedural protections mandated by the Due Process Clause.)

3. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).” One of The most precious rights possessed by parents is the right to raise their children free of government interference. That right, “more precious than mere property rights,” is a liberty interest, protected by the substantive and procedural Due Process Clauses of the Fourteenth Amendment

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4. *Franz v. U.S.*, 707 F.2d 582, 595^Q599; US Ct App (1983). A parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible, reliable adult.

"14th amendment of the United States of America Constitution All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5th amendment of the United States of America Constitution-No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

. *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984), the Supreme Court held that the prohibition on double jeopardy extends to civil sanctions which are applied in a manner that is punitive in nature

Amendment I) to the United States Constitution- prevents the government from making laws which regulate an establishment of religion, or that would prohibit the free exercise of religion, or abridge the freedom of speech, the freedom of the press, the freedom of assembly, or the right to petition the government for redress of grievances.

31 U.S. Code § 3729 - False claims(a)Liability for Certain Acts.—(1)In general.—Subject to paragraph (2), any person who—(A)knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;(B)knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;conspires to commit a violation of subparagraph (A), (B), (D), €, (F), or G);(D)has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;€is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;(F)knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or(G)knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation

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to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, Is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410 [1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

1st amendment of the United States of America Constitution

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- C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Judy Johnson and Kathleen w gariano are state judges who have deprived natural citizens of the United States their constitutional and natural rights while on the bench depriving one of constitutional rights is not a judicial function and or responsibility of a judge or judicial officer

Judy Johnson and Kathleen w gariano are employees of the state. And hold judicial power.

III. Statement of Claim

Judy Johnson and Kathleen gariano are corrupted officials who in several ways deprived me and z.e of civil rights and other constitutionally protected rights. They have done everything from perjury to fraud they are a shame to the justice system and should be dealt with accordingly so they can no longer continue to destroy families.

1.Judy Johnson dismissed Christian Cunningham paternity petition twice and committed fraud by making false statements and entering fictitious information which was were aimed at depriving Christian Cunningham of a relationship with his child Z.E

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1.2 Johnson disrespected and discriminated against Christian Cunningham's religion when Christian Cunningham attempted to offer into evidence messages proving that he was the father of the child that she refused to give him a paternity test for and or a default order she stated "I don't give a damn if you had a message from God I'm not doing it" plaintiff told her this was being reported shortly after the statement Judy Johnson said" well this case is being dismissed then " and hung up. But the dismissal reflected that plaintiff solely wanted by default order and not a paternity test on the plate and on the petition filled by it clearly states that Christian Cunningham wanted either paternity or default order.

2 Judy Johnson knowingly knowingly entered fraudulent information with the sole purpose of increasing Christian Cunninghams support obligation and forced Christian Cunningham to abide by the illegal order and refused upon petition to the court to change the court order judge Kathleen gariano dismissed the objection and stated the reason for dismissal was that the before mentioned fraudulent order was "lawful and fair"

3 Kathleen w gariano terminated All Access between Christian Cunningham and child z.e on several occasions without first deeming Christian Cunningham unfit or taking him through a trial and or without any clear and convincing evidence of any potential harm to the child

4 Kathleen gariano Stated "I don't care about your 14th amendment right this is my courtroom what I say goes'

5. Kathleen gariano discriminated on basis of gender and the when she was asked why the mother didn't have to go through any of the things the father has been going through to see his child and why she didn't need to know what kind of person the female mother was she replied "Because I don't need to know what type of person the mother is she carried the child in her stomach for 9 months"

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6.Kathleen w gariano awarded custody to mother without first deeming father unfit and without a trial and or any clear and convincing evidence of impending harm to child

7.Kathleen w gariano on ex parte order and little evidence granted the mother of z.e an order of protection because she states she is afraid. Christian Cunningham attempted to get a restraining order with similar circumstances she denied him in order of protection and did not punish the mother as she did him without trial

8.Kathleen w gariano and Judy Johnson conspire to defraud the court and against Christian Cunningham by working together to force Christian Cunningham to abide by an illegal court order and stole from Christian Cunningham by procedure of fraud

9.Kathleen w gariano has completely deprived Christian Cunningham of a natural relationship with his child and continues to do so

10.Kathleen w gariano deprives child z.e of a relationship with his parent without first deeming his parent unfit and without first a trial and absent any impending danger to child z.e

11. Kathleen w gariano knows Christian Cunningham and has prior knowledge several of the facts being entered in evidence prior to Christian Cunningham filing paternity petition creating a conflict of interest when asked to recuse herself Kathleen w. gariano denied to recuse

12. Kathleen w gariano refuses to punish the other party for denial of visitation but continuously unjustly punishes and harshly condemns Christian Cunningham for his attempts to be a good father.

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13. Kathleen w gariano purposely and intentionally put child z.e in harm's way by forcefully subjecting Christian Cunningham child z.e to covid 19 virus and other unhealthy unsanitary conditions and simply disregarded and did not care about Christian Cunningham's objections pleas and concerns to his child safety.

14. Kathleen w. Gariano forces many off the record conversations which can and will be disseminated upon request and to the public.

15. Kathleen gariano and Judy Johnson conspire to steal and financially deprive And commit fraud against Christian Cunningham by forcing him to abide by an illegal unjust and unfair court support order they have worked hand in hand to dismiss any attempts to petition to correct the illegal unjust and a fair court support order.

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B. What date and approximate time did the events giving rise to your claim(s) occur? August of 2020-continuing

C. What are the facts underlying your claim(s)?

I was deprived of several civil. Natural and constitutional rights will make evidence available upon appropriate Court appearance

IV. Injuries

Caused:PTSD financial harm. And depression

V. Relief

Punitive damages

Compensatory damages

Granted 50%custody of natural child z.e

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And audit is ordered upon the defendants cases any potential victims should be encouraged to come forward and interviewed and if sufficient evidence proves that they were also deprived of rights under color of law

the appropriate measures be taken against Judy Johnson and Kathleen w gariano

Judy Johnson and kathleen w gariano should be removed from their positions as judge and support Magistrate

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

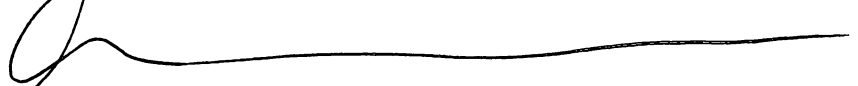
A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

03-21-2022

Signature of Plaintiff



Printed Name of Plaintiff

Christian Cunningham

B. For Attorneys

Date of signing:

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Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

CIVIL COVER SHEET

22 CV 234

234

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Christian Cunningham
2, E (minor)

DEFENDANTS Judy Johnson
Kathleen W - gariano

(b) County of Residence of First Listed Plaintiff Niagara
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Niagara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

45 Law 42 (1983)

Brief description of cause:

I and 2, E were deprived several constitutional rights under color of LAW

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03-21-2022

SIGNATURE OF ATTORNEY OF RECORD

Pro-SE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE